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SMALL AGENCY AUDIT IMPROVEMENT ACT OF 1986

JULY 31 (legislative day, JULY 28), 1986.—Ordered to be printed

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 2005]

The Committee on Governmental Affairs, to which was referred the bill (S. 2005) to make certain technical amendments to the Inspector General Act of 1978 (5 U.S.C. Appendix 3), to provide greater independence and visibility to audit and investigative activities in smaller Federal agencies, and to require a study of audit coverage in small Federal agencies, especially Federal agencies not having any existing audit or investigative offices, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

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I. SUMMARY AND PURPOSE

In order to consolidate and further strengthen internal audit and investigative efforts in the Federal Government, S. 2005, as reported, would make certain technical amendments to the Inspector General Act of 1978 (IG Act) and extend significant statutory protections and requirements to audit and investigative units in about

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40 Federal agencies, boards, commissions, and corporations that are not currently subject to the IG Act.

All Federal entities having audit, or audit and investigative units, except those entities specifically excluded, would be required by statute to:

—Consolidate their internal audit and investigative units,
—Insulate the internal audit unit from program operating responsibilities,
—Have the internal audit unit head report directly to the agency head or deputy, and
—Notify the Congress of the reasons for removal or involuntary transfer of the audit unit head.

In addition, the heads of internal audit units in certain Federal entities with larger audit or investigative staffs (generally ten persons or more) would be granted most of the specific statutory authority and responsibility provided to statutory Inspectors General under Sections 4 through 7 of the IG Act.

S. 2005 would further require that the President's Council on Integrity and Efficiency (PCIE) conduct a study concerning (1) the extent and effectiveness of audit and investigative activities at Federal entities, particularly those at which internal audit units have not been established, (2) the most appropriate and efficient methods of assuring effective audits and investigations at such entities, and (3) an assessment of the extent to which the authorities, duties and responsibilities provided under sections 4–7 of the IG Act should be extended to additional audit offices. The PCIE would be required to report its findings and recommendations to the President and the Congress within one year.

II. Background

The Accounting and Auditing Act of 1950 directs the head of each executive agency to "establish and maintain systems of accounting and internal control designed to provide . . . effective control over and accountability for all funds, property, and other assets for which the agency is responsible, including appropriate internal audit. . . ." The Act further provides that the accounting systems of executive agencies "shall conform to the principles, standards, and related requirements prescribed by the Comptroller General. . . ." [1]

In 1957, the General Accounting Office (GAO) issued a "Statement of Principles and Concepts of Internal Auditing for Federal Agencies." This was followed in 1968 by revised guidelines which recommended that "each department or agency have a single centralized internal organization reporting to the agency head or to a principal executive next in line. The intent was to enhance auditor independence and freedom, concentrate efforts, and gain top-level attention to audit findings." [2]

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[1] Section 113, Public Law 81-784, 31 U.S.C. 21.
[2] GAO 1966–1981 An Administrative History, U.S. General Accounting Office, 1981, p. 59.

DISCLOSURE OF DEFICIENCIES IN INTERNAL AUDIT ACTIVITIES

Under the Audit and Accounting Act of 1950 and the related requirements promulgated by the General Accounting Office, the head of each executive agency is required to provide appropriate internal audit. However, the law was widely ignored.

From 1966 through 1970, GAO made reviews of the internal audit functions at nine departments and nine major agencies. In most instances, GAO found, the internal auditor was responsible to an official who was also directly responsible for some other agency activities. In a 1970 report summarizing its findings, GAO pointed out that:

> Under these circumstances, the internal auditor could find himself in the position of reporting matters which reflect adversely on activities or operations which are carried out within the responsibility of his immediate superior.[3]

In 1976, more than 25 years after enactment of the 1950 law, GAO found that ". . . some agencies still have not established audit groups and others are understaffed." GAO further concluded that:

> The complete or partial absence of internal audit capability means that Federal expenditures in the affected agencies are not being subjected to the important internal control provided by auditors. In addition, opportunities to reduce or eliminate unnecessary or wasteful practices and identify potential cost reductions are being lost.[4]

A 1977 Congressional investigation disclosed continued serious deficiencies in auditing and investigative procedures and resources at 12 of the largest Federal departments and agencies. At almost every agency, auditors were under the supervision of officials who either had management responsibility for programs being audited or were devoting only a fraction of their time to audit duties. Some agencies had multiple audit units, organized in fragmented fashion and without effective leadership; one department had 116 separate audit and investigative units. There were no procedures to insure that Congress was informed of serious problems disclosed by audits. Because of inadequate resources, some activities had never been audited and audit cycles were as long as 20 years.[5]

Although there was overwhelming evidence of problems and deficiencies in auditing and investigative activities, every department and agency covered by proposed legislation to establish inspectors general opposed its enactment.[6] In May 1977, the Office of Management and Budget (OMB) stated that ". . . we strongly oppose [the IG bill] and its enactment would not be in accord with the program of the President."[7] Notwithstanding these objections, the legisla-

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[3] GAO Views on Internal Auditing in the Federal Agencies, B-132900, 1970, pp. 6-7.

[4] An Overview of Federal Internal Audit, GAO Report FGMSD-76-50, November 29, 1976, p. 15.

[5] Establishment of Offices of Inspector General in Certain Executive Departments and Agencies, H. Rept. 95-584, August 5, 1977.

[6] Ibid.

[7] Ibid., pp. 6-7.

tion was approved with only six dissenting votes in the House and none in the Senate, and it became the Inspector General Act of 1978.[8]

SUCCESS OF INSPECTOR GENERAL CONCEPT

Although establishment of statutory Offices of Inspector General had been almost universally opposed by officials of the Executive branch, the IG legislation, once enacted, was soon widely endorsed.

On December 13, 1978, President Carter described the Inspectors General as "Perhaps the most important new tools in the fight against fraud. . . ."[9] In August 1980, the then Deputy Director of OMB publicly stated that "The Inspector General Act of 1978 is a landmark legislation that warrants full and active support of all three branches of the government."[10]

In December 1982, President Reagan said, "I'm proud of my Inspectors General . . . Their highly successful programs to detect and prevent the waste of precious tax dollars demonstrate to the public that Government is capable of cleaning up its own act, and in a broader context, capable of effectively managing the public's business."[11] In October 1983, the Deputy Director of OMB testified that, "I believe the Inspectors General have done a tremendous job . . . I would say that we have not seen from an objective point of view any major problems with the Inspector General activities with the departments where they are operating. . . ."[12]

ADMINISTRATIVE DIRECTIVES CALLING FOR STRONG INTERNAL AUDIT

Both the Carter and Reagan administrations coupled their praise for the IG concept with administrative directives designed to provide strong internal audit in agencies without statutory Inspectors General.

On December 13, 1978, President Carter issued a memorandum for the heads of executive departments and agencies directing that significant features of the Inspector General program be extended throughout the Federal government. The memorandum specifically requested that each department and agency make an analysis of all resources devoted to the audit and investigation functions and report on plans for using such resources to deal with waste, fraud and error in their programs.[13]

On January 3, 1979, the Director of OMB sent a follow-up memorandum to the heads of executive departments and agencies asking that a single official, accountable directly to the agency head, be appointed to "monitor the implementation of the plan to assure that your agency adheres to the same rigorous standard of audit

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[8] Hearings before a subcommittee of the House Committee on Government Operations. Establishment of Offices of Inspector General, 1977, p. 769.

[9] Public Law 95-452.

[10] Remarks at HEW National Conference on Fraud, Abuse, and Error, December 13, 1978.

[11] Hearings before a subcommittee of the House Committee on Government Operations on Inspector General Act Amendments of 1980, August 27, 1980, p. 50.

[12] Report of President's Council on Integrity and Efficiency, December 23, 1982.

[13] Testimony of Joseph R. Wright, Jr., Hearing before a Subcomittee of the House Committee on Government Operations, Inspector General Act Amendments of 1983, October 26, 1983, p. 22.

and investigative effort that we are expecting from the Inspector General agencies."[14]

On June 20, 1983, OMB issued a revised circular to heads of executive departments and agencies on policies to be followed in the audit of Federal operations and programs. The circular repeated the previously stated policy that, "Agencies are responsible for providing adequate audit coverage of their programs. . . ." The circular stated specifically that the audit organization should report to the head or deputy head of the agency.[15]

CONTINUING DEFICIENCIES IN INTERNAL AUDIT ACTIVITIES

The IG legislation has undoubtedly improved audit and investigative activities at the affected departments and agencies. However, there is evidence of continuing deficiencies in the audit activities of certain Federal agencies which do not have statutory Inspectors General.

A May 1984 GAO report made the following comments concerning internal audit capabilities of 99 Federal entities without statutory Inspectors General:

> . . . some agencies are not complying with OMB Circulars A-50 and A-73, which address audits of federal operations and programs and audit follow-up; and with GAO's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." Some agencies have no audit coverage; at others the internal auditor does not report to the head or deputy head of the agency; and at several agencies that have more than one audit or investigative unit, there are no procedures for coordination.[16]

The GAO report was based on 99 responses received to questionnaire surveys sent to 105 Federal organizations, and the deficiencies cited were essentially those acknowledged by the entities responding.

A recent follow-on review by GAO of those agencies with audit and/or investigative groups ". . . uncovered many of the same problems that prompted Congress to establish statutory Inspectors General in other agencies including:

—A lack of audit independence at many agencies because auditors were under the supervision of officials directly responsible for activities subject to audit;
—Inadequate audit coverage of important and vulnerable agency operations;
—Lack of evaluation of significant fraud problems by internal audit/investigative staffs; and
—Audit resolution and follow-up systems that did not meet governmental requirements."[17]

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[14] Waste, Fraud, and Error in Government Programs, Memorandum from the President, December 13, 1978.
[15] Steps to Eliminate Waste, Fraud, and Error in Government Programs, Memorandum for the Heads of Executive Departments and Agencies from James T. McIntyre, Jr., January 3, 1979.
[16] OMB Circular No. A-73, Revised, June 20, 1983.
[17] Status of Internal Audit Capabilities of Federal Agencies without Statutory Inspectors General, AFMD-84-45, May 4, 1984.

III. Legislative History

In April 1985, the Administration forwarded to the Congress a series of technical amendments to the IG Act which would establish uniform salary levels for all IGs, place the IGs in the Departments of Energy and Health and Human Services under the provisions of the IG Act and provide authority to the IGs to administer oaths. This proposal provided a vehicle for making other needed changes to the IG Act.

Senator William V. Roth, Jr. introduced S. 2005 on January 22, 1986. The bill, as introduced, made the technical amendments to the IG Act requested by the Administration. It also extended statutory IG protections and requirements to audit and investigative units in Federal agencies, boards, commissions, and corporations that are not currently subject to the IG Act.

S. 2005 extends the IG Act concept to about 40 Federal organizations which presently have one or more audit or investigative staffs. There are about 60 other small organizations which have no internal audit or investigative capability at all. The bill, as introduced, provided for establishment of an Inspector General interagency committee appointed by the President, to study and make recommendations regarding (1) the extent and effectiveness of audit and investigative activities at Federal entities, especially those in which internal audit units have not been established, and (2) the most appropriate and efficient methods of assuring effective audits and investigations at such entities.

The Committee held a hearing on this and several other bills constituting the President's Management Legislative Initiatives on February 26, 1986. Testimony was received from James C. Miller III, Director, Office of Management and Budget, and Charles A. Bowsher, Comptroller General of the United States.

Mr. Miller did not comment on S. 2005 in his prepared testimony, but he responded to questions on the bill from Senator Roth (see p. 20 of hearing print), as follows:

> Chairman Roth. As a strong supporter of the inspector general concept, I do think it is important that we extend that concept to the other agencies.
>
> The major complaint is that this could be costly or expensive. Is that necessarily inherent in setting up an independent audit office?
>
> Mr. Miller. I don't think so. Our finding is that inspectors general tend to, by far, pay for themselves.
>
> Chairman Roth. Do you support, in principle, the extension of this concept to the independent agencies?
>
> Mr. Miller. Yes.

In an attachment to his testimony, the Comptroller General supported passage of S. 2005, stating that it would "significantly improve the effectiveness" of small agency audit and investigative activities and help correct the problems GAO has found, "particularly the poor coordination among, and the potential lack of independence of the audit and investigative functions."

IV. Need for Legislation

Eleven cabinet departments and six major agencies now have statutory Inspectors General. The IGs have overall responsibility for coordination and leadership of internal auditing and investigative activities in these agencies and are required to report periodically to their agency heads and the Congress concerning significant problems, abuses or deficiencies and the progress of corrective action. The statutes creating these offices contain a number of specific provisions designed to insure that IGs have the independence and authority necessary to carry out their responsibilities.

The success of the statutory Inspectors General has been possible because of several fundamental improvements mandated by the legislation creating their offices. Under the IG statutes, responsibility for internal audits and investigations was placed in a single central unit in each agency headed by an Inspector General. Before, uncoordinated audit and investigative units were often scattered throughout an agency. There are specific statutory provisions designed to insure a high degree of independence and to provide the IG with sufficient authority to carry out his or her responsibilities. By law, the IG has direct access to the agency head and significant findings are required to be reported to both the agency head and the Congress.

The Administration's proposed legislation would standardize Inspector General authorizing legislation and make other technical and administrative changes of the 1978 Act. S. 2005, as introduced, incorporated these provisions. Given the success of the Inspectors General, however, the bill goes one step further by extending some of the IG concepts and protections to smaller federal entities, such as executive agencies, regulatory boards, and commissions, and government corporations with internal audit or investigative units which have no statutory authority or independence.

Strong internal audit is especially needed at smaller agencies because their operations usually are not closely watched by the Congress, the press, or the public. In the absence of an independent internal audit unit, there is greater risk that serious problems and deficiencies will not be reported to the agency head, and there is no assurance such problems will become known outside the agency.

S. 2005 would significantly improve internal audits and investigations in small Federal agencies without requiring additional expenditures or personnel. Additional authority and responsibility are given to audit units at these entities, but the Committee anticipates that no staff increases would be required, at least initially, to carry them out. Consolidation of audit operations could improve operational efficiency and free resources to respond to any additional workload resulting from this legislation.

The bill represents another important step in improving management and reducing fraud and abuse in Federal programs and activities, and the Committee has therefore reported it favorably to the Senate.

V. Committee Action and Vote

At its meeting on June 25, 1986, the Committee adopted an amendment in the nature of a substitute to S. 2005 proposed by

Senator Roth. This substitute incorporated a number of changes which respond to comments made by witnesses at the February 26 hearing and information supplied following the hearing by GAO, OMB, and representatives of the PCIE.

Mr. Bowsher expressed concern in the attachment to his prepared statement about a provision in the bill, as introduced, which had been requested by the Administration to change the IG Act's reporting requirements. This provision (section 5 of S. 2005, as introduced) would have deleted the requirement that IGs report each significant recommendation described in previous semi-annual reports on which corrective action has not been *completed* and instead would have required the IGs to report only such recommendations that have not been *resolved.*

The attachment to Mr. Bowsher's prepared testimony stated that, generally, the executive branch defines "resolution" as that point at which agreement is reached as to what specific action *will be* taken in response to an audit recommendation. This definition falls short of GAO's internal control standards, which stipulate that audit resolution is not complete until the identified deficiencies *have* been corrected.

To encourage prompt and responsive actions to address audit findings and recommendations, GAO believes that the IGs' reports should include the status of both the agreement process and the status of the action taken to correct significant deficiencies on which agreement has been reached. The amendments to S. 2005 adopted by the Committee delete the original section 5, thus retaining the existing requirement that IG reports include "an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been *completed.*" (Emphasis added.)

In its comments on S. 2005 furnished at the time of the hearing, OMB noted that the Inspectors General are in the forefront of the Administration's fight to control fraud, waste and abuse in Federal programs. The Administration supports, in concept, the extension of the IG Act to small agencies with audit units, believing such units would contribute to the President's efforts. However, concern was expressed that several of the IG Act's requirements may be "unduly burdensome" on small agencies. OMB asked the PCIE to work with the Committee to "identify ways to alleviate unnecessary burdens without compromising independence and the dual-reporting relationship with Congress and agency management." OMB suggested a two-tier approach.

PCIE representatives subsequently met with the Committee staff at which time they provided information on staff size and the nature of audit and investigative activities at some of the smaller agencies. They also recommended alternative courses of action that represented some combination of:

—Proceeding with the provisions of section 6 that would ensure independence of all internal audit units.

—Performing the study required in the bill.

—Either transferring only those duties and responsibilities that can realistically be assumed by even the smallest internal audit unit, or awaiting the results of the PCIE study, then ex-

tending additional authorities and responsibilities based on the PCIE's case-by-case assessment of each agency.

The amendments adopted by the Committee built on the OMB and PCIE suggestions and took a two-tier approach as follows:

1. All Federal entities having audit/investigative units, except those specifically excluded, would be required to (a) consolidate their audit and investigative operations, (b) insulate the audit unit from program operating responsibilities, (c) have the audit unit head report to the agency head or deputy and (d) notify the Congress of the reasons for removal or involuntary transfer of the audit unit head.

2. Certain Federal entities with larger audit/investigative staffs, generally 10 or more, would be granted most of the authority, duties and responsibilities in sections 4–7 of the IG Act.

The reported bill omitted the more labor-intensive duties in section 4 (items (2) and (3)) which are not directly related to the basic audit and investigative functions. The Committee also chose not to include subpoena power or independent hiring authority as provided the current IGs in section 6. The Committee does not believe either of these authorities is essential for carrying out the audit and investigative functions in these smaller offices. If experience shows that additional offices should be granted these authorities, they could be provided in subsequent legislation. The audit unit heads would issue annual reports to the agency heads and Congress, rather than the semi-annual requirement for IGs.

S. 2005, as amended, also modifies the study requirement by designating the PCIE to perform the study in lieu of a Presidentially appointed interagency committee of IGs. PCIE representatives said the Council is ready to undertake the study now. Because of the two-tier approach taken in this bill, a provision was added to the study agenda requiring an assessment of the extent to which the authorities, duties and responsibilities in sections 4–7 of the IG Act should be extended to additional audit offices.

To expedite its start, the Chairman requested by letter dated May 7, 1986 that the PCIE begin the study mandated by section 6 of the proposed substitute. The Committee retained the study requirement in section 6, however, to ensure successful completion of the project.

On June 25, the Committee on Governmental Affairs agreed to report favorably S. 2005, as amended, to the Senate, by unanimous vote of 7 to 0.

YEAS—7	NAYS—0
Roth	
Mathias	
Durenberger	
Rudman	
Cochran	
Eagleton	
Levin	

Senators Cohen, Glenn, and Gore, not present when the vote was taken, also expressed their approval of the bill.

VI. Section-by-Section Analysis

SHORT TITLE

The opening section states the title of this bill as the "Small Agency Audit Improvement Act of 1986."

Sec. 2—Conformation of authorities of Inspectors General

Section 2 incorporates the Offices of Inspector General of the Departments of Energy and Health and Human Services into the Inspector General Act of 1978, conforming their authorities and responsibilities to those of the other IG offices established by the Act. Incorporating the IG offices of the Departments of Energy and Health and Human Services into the IG Act will eliminate the statutory position of Deputy Inspector General at both departments. This section also repeals the previous statutory provisions under which the offices of Inspector General at Energy and at Health and Human Services functioned, since they would now be covered by the IG Act. In addition, references to the Community Services Administration Inspector General are deleted from the Inspector General Act because that agency was abolished in 1982.

Sec. 3—Uniform salaries for Inspectors General

This section provides that all statutory Inspectors General will be compensated at the Executive Level IV rate, regardless of the agency in which they serve. Under present laws, statutory IGs are compensated at different rates even though their duties are essentially the same.

Sec. 4—Oath administration authority

Section 4 authorizes IG personnel to administer oaths when necessary in the performance of their duties. During the conduct of investigations, it is often necessary for IG personnel to take voluntary sworn statements. Most IG offices have authority to administer oaths for this purpose but a few do not. This amendment makes the authority uniform and provides it for all IG offices. It would not authorize IG personnel to subpoena testimony.

Sec. 5—Requirements for internal audit units in certain agencies

Section 5 amends the IG Act by inserting a new section 8B establishing requirements for the internal audit units in certain Federal organizations not now covered by the Act.

Subsection (a) of the Act's new section 8B provides that an internal audit unit in a "Federal entity" (defined below and see appendix A) shall be responsible for conducting audits or investigations of the entity's programs and operations in accordance with the requirements of this section. This makes the audit unit solely responsible for such audits or investigations.

Any such entity now having audit, or audit and investigative staff would be covered. Any entity as defined in this section which later establishes an audit, or audit and investigative capability of its own also would be covered.

Subsection (b) requires that the audit unit head is henceforth to be appointed by the Federal entity head in accordance with the

laws and regulations governing appointments in the civil service. Persons occupying such positions on the date of enactment would not be affected.

Within 180 days of enactment of these amendments, subsection (c) provides for consolidation of internal audit unit in such entities into a single unit. Subsection (d) authorizes the Federal entity head to transfer to the internal audit unit other units or components of the entity, or functions, powers, or duties of such units or components if they are properly related to the internal audit unit's functions and the purposes of this section would be furthered. However, no program operating responsibilities may be transferred. Many organizations perform audit-like functions, such as bank examinations, as part of their program operations. These functions would not be affected by this provision.

Subsection (e) states that the internal audit unit head is to report to the Federal entity head, or to the extent such authority is delegated, the officer next in rank below the entity head. Neither of these officials, however, is to prevent or prohibit the internal audit unit head from initiating, carrying out, or completing any audit or investigation. This subsection provides the internal audit unit head a direct link to top management while protecting his independence to audit or investigate any aspect of the entity's operations within its scope of authority.

If an internal audit unit head is removed or involuntarily transferred, subsection (f) requires a Federal entity head to promptly communicate to both Houses of Congress the reasons for such action.

Subsection (g) assigns to the internal audit unit heads of certain Federal entities listed below several powers, duties, and responsibilities now given Inspectors General under existing provisions of the Act. The Federal entities covered by the subsection are:

ACTION, Amtrak, Equal Employment Opportunity Commission, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, Federal Home Loan Bank Board, National Archives and Records Administration, National Science Foundation, Nuclear Regulatory Commission, Panama Canal Commission, Peace Corps, Office of Personnel Management, and the United States Information Agency.

The IG duties and responsibilities in subsection 4(a) of the IG Act assigned by subsection 8B(g) to the internal audit unit heads of these entities are:

(1) to provide policy direction for and to conduct, supervise and coordinate audits and investigations relating to the programs and operations of each entity,

(2) to recommend policies for, and to conduct, supervise, or coordinate relationships between such entity and other Federal agencies, State and local government agencies, and non-governmental entities with respect to (A) all matters relating to promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such entity, or (B) the identification and prosecution of participants in such fraud and abuse (paragraph 4(a)(4) of the Act), and

(3) to keep the head of such entity and the Congress fully and currently informed, by means of the reports required by section 5 of the Act and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such entity, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action (paragraph 4(a)(5) of the Act).

In carrying out these responsibilities, the internal audit unit heads, as in subsection 4(b) of the IG Act, shall:

(1) comply with standards established by the Comptroller General for audits of Federal establishments, organizations, programs, activities, and functions;

(2) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(3) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General.

The audit unit heads are to give particular regard to the activities of the Comptroller General with a view toward avoiding duplication and insuring coordination and cooperation. Such heads are also to report expeditiously to the Attorney General whenever they have reasonable grounds to believe there has been a violation of Federal criminal law.

Subsection (g) of the new section 8B also assigns certain reporting responsibilities contained in section 5 of the IG Act, except that the reports required by this section shall be made annually, on October 31 of each year, in lieu of semi-annually as in the case of the Inspectors General. These reports shall include, but not be limited to:

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the unit during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1) above;

(3) an identification of each significant recommendation described in previous reports on which corrective action has not been completed;

(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the entity head regarding the denial of information or assistance; and

(6) a listing of each audit report completed by the audit unit during the reporting period.

These reports are to be furnished to the entity head involved not later than October 31 of each year and then transmitted by the entity head to the appropriate committees or subcommittees of the Congress within 30 days after receipt of the report, together with a report by the entity head containing any comments such head deems appropriate.

Such reports are to be made available to the public upon request and at a reasonable cost within 60 days of their transmission to the Congress by the entity head. However, information shall not be disclosed to the public which is (1) specifically prohibited from disclosure by any other provision of law, (2) specifically required by Executive order to be protected from disclosure in the interest of national defense or in the conduct of foreign affairs, or (3) a part of an ongoing criminal investigation; provided, however, that any report may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record. Information may not be denied from the Congress, or any committee or subcommittee thereof.

Most of the IG Act's section 6 authorities are extended to the audit unit heads of the Federal entities listed above by the new subsection 8(B)(g). These audit unit heads are authorized to:

(1) have access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable entity which relate to programs and operations with respect to which the audit unit head has responsibilities under the Act;

(2) make such investigations and reports relating to the administration of the programs and operations of the applicable entity as are, in the judgment of the audit unit head, necessary or desirable;

(3) request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by the Act from any Federal, State, or local governmental agency or unit thereof;

(4) have direct and prompt access to the entity head when necessary for any purpose pertaining to the performance of functions and responsibilities under the Act (paragraph 6(a)(5) of the Act); and

(5) enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of the Act (paragraph 6(a)(8) of the Act).

The Federal entity head is to furnish information or assistance to the internal audit unit head, or his designee, when requested under authority summarized in paragraph (3) above, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested. Whenever the requested information or assistance is, in the judgment of the audit unit head, unreasonably refused or not provided, the audit unit head shall report the circumstances to the entity head without delay.

The internal audit unit is to be provided appropriate and adequate office space at central and field office locations of the entity, together with such equipment, office supplies and communications facilities and services as may be necessary for the unit's operations, and necessary maintenance services.

Finally, the provisions of the Act's section 7 are to apply to the audit unit heads of the Federal entities listed above, and their em-

ployees, in the same manner as they apply to Inspectors General. Section 7 authorizes the receipt and investigation of complaints and information from agency employees concerning the possible existence of activities constituting a violation of law, rules or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

Subsection (h) of the new section 8B defines terms for purposes of this section:

(1) "entity head" means the director, administrator, president, chairman, or other chief officer of a Federal entity;

(2) "Federal Entity" has the same meaning as is given to the term "agency" in section 552(e) of title 5, United States Code, except such term does not include an establishment (as defined in section 11(2) of the IG Act), the Departments of Justice and Treasury, the Central Intelligence Agency, the U.S. Postal Service, the General Accounting Office, or any entity in the judicial or legislative branches;

(3) "internal audit unit" means an office, unit, or other component of a Federal entity which carries out audits, or audits and investigations, for the purpose of reviewing the programs and operations of such entity, but does not include an office, unit, or other component which carriers out audits or investigations as an integral part of the programs or operations of such entity: and

(4) "internal audit unit head" means the director or other chief officer of an internal audit unit.

Sec. 6—Study required

Section 6 requires the President's Council on Integrity and Efficiency to conduct a study of the extent and effectiveness of internal audit and investigative activities at Federal entities, particularly those in which internal audit units have not been established in accordance with the new section 8B of the IG Act, the most appropriate and efficient methods of assuring effective audits and investigations at Federal entities, and the extent to which additional authorities, duties and responsibilities specified in sections 4 through 7 of the IG Act should be provide to all the Federal entities covered in the new section 8B.

The Committee intends that the PCIE examine not only the agencies at which there is now no audit or investigative office, but also the extent and effectiveness of such offices in agencies having very small audit and investigative staffs, generally those with less than 10 employees. There may be an opportunity to provide audit and investigative services more efficiently at a central location or by using existing Inspector General offices.

The President's Council is to provide a report on this study containing its findings and recommendations within one year after the date of enactment of this section.

Sec. 7—Effective date

Section 7 provides that section 6 shall take effect on the date of enactment. Other sections shall take effect on January 1, 1987.

VII. Evaluation of Regulatory Impact

Paragraph II(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact which would be incurred in carrying out the bill.

S. 2005 makes certain amendments to the Inspector General Act of 1978, but it neither confers new regulatory functions nor establishes additional reporting requirements on the public. Therefore, no new regulations would be promulgated, and no new information requirements would be made on the public. Accordingly, the Committee estimates there would be no regulatory or paperwork impact resulting from this legislation.

VIII. Estimated Cost of Legislation

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 23, 1986.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2005, the Small Agency Audit Improvement Act of 1986, as ordered reported by the Senate Committee on Governmental Affairs, June 25, 1986.

The bill would make a number of changes to the Inspector General (IG) Act of 1978 that would improve the effectiveness of audit units in federal agencies, including about 40 agencies not currently covered by the IG Act. One of these changes would establish uniform salary levels for all Inspectors General, resulting in increased costs totaling about $30,000 annually. Other provisions of the bill, including a study on the audit activities of federal agencies to be prepared by the President's Council on Integrity and Efficiency, are estimated to have no significant cost.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner, *Director.*

IX. Changes in Existing Law

In compliance with paragraph 12 rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * * * *

Subchapter II—Executive Schedule of Pay Rates

* * * * * * *

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Inspector General, Department of Commerce.
Inspector General, Department of the Interior.
Inspector General, Department of State.
Inspector General, Agency for International Development.
Inspector General, Environmental Protection Agency.
Inspector General, General Services Administration.
Inspector General, National Aeronautics and Space Administration.
Inspector General, Small Business Administration.

* * * * * * *

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

[Inspector General, Department of Commerce.]
Members, Federal Labor Relations Authority (2) and its General Counsel.
[Inspector General, Department of the Interior.]
Director of the Office of Government Ethics.
[Inspector General, Community Services Administration.]
[Inspector General, Environmental Protection Agency.]
[Inspector General, General Services Administration.]
[Inspector General, National Aeronautics and Space Administration.]
[Inspector General, Small Business Administration.]

* * * * * * *

Deputy Inspector General, Synthetic Fuels Corporation.

* * * * * * *

INSPECTOR GENERAL ACT OF 1978

* * * * * * *

§ 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved

In order to create independent and objective units—

(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Education, *the Department of Energy, the Department of Health and Human Services,* the Department of Housing and Urban Development, the Department of the Interior, the Department of Labor, *the Department of State,* the Department of Transportation, the Agency for International Development, the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, *and* the Veterans' Administration[, and the Department of State];

* * * * * * *

S. 5(a) * * *

* * * * * * *

(3) an identification of each significant recommendation [described in previous semiannual reports on which corrective action has not been completed] *which was described in previous semiannual reports and which has not been resolved;*

§ 6. Authority of Inspector General; information and assistance from Federal agencies; unreasonable refusal; office space and equipment

(a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

* * * * * * *

(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an investigator or such other employee of an office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;

[(5)] *(6)* to direct and prompt access to the head of an establishment involved when necessary for any purpose pertaining to the performance of this Act;

[(6)] *(7)* to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of Title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

[(7)] *(8)* to obtain services as authorized by section 3109 of Title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–18 of the General Schedule by section 5332 of Title 5, United States Code; and

[(8)] *(9)* to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

§ 8A. Special provisions relating to the Agency for International Development

(a) * * *

* * * * * * *

REQUIREMENTS FOR CERTAIN INTERNAL AUDIT UNITS

SEC. 8B. (a) An internal audit unit established in a Federal entity shall be responsible for the conduct of audits or investigations of the programs and operations of such entity in accordance with the requirements of this section.

(b) On or after the effective date of the Small Agency Audit Improvement Act of 1986, any appointment to the position of internal audit unit head of a Federal entity shall be made by the entity head of such entity in accordance with the laws and regulations governing appointments in the civil service.

(c) Within 180 days after the effective date of the Small Agency Audit Improvement Act of 1986, the entity head of each Federal entity in which more than one internal audit unit has been established shall consolidate such units into a single internal audit unit.

(d)(1) Except as provided in paragraph (2), the entity head of a Federal entity may transfer to an internal audit unit of such entity other units or components of such entity, or functions, powers, or duties of such units or components, if such entity head determines that—

(A) such units, components, functions, powers, or duties are properly related to the functions of such internal audit unit; and

(B) such transfer would further the purposes of this section.

(2) An entity head may not transfer to an internal audit unit any program operating responsibilities.

(e) Each internal audit unit head of a Federal entity shall report to and be under the general supervision of the entity head of such entity or, to the extent such authority is delegated, the officer next in rank below such entity head, but shall not report to, or be subject to supervision by, any other officer of such entity. Neither the entity

head of such entity nor the officer next in rank below such entity head shall prevent or prohibit the internal audit unit head from initiating, carrying out, or completing any audit or investigation.

(f) If an internal audit unit head is removed from office or involuntarily transferred to another position or location, the entity head concerned shall promptly communicate the reasons for any such removal or involuntary transfer to both Houses of Congress.

(g)(1) The provisions of subsections (a)(1), (a)(4), (a)(5), (b), (c), and (d) of section 4 shall apply to the internal audit unit head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment.

(2) The provisions of section 5 shall apply to the internal audit unit head of a Federal entity and the entity head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment and the head of an establishment, respectively, except that for purposes of this paragraph, the reports required by such section shall only be made annually, on October 31 of each year, with respect to activities of the internal audit unit during the immediately preceding twelve-month period ending September 30.

(3) The provisions of subsections (a)(1), (a)(2), (a)(3), (a)(6), (a)(9), (b), and (c) of section 6 shall apply to the internal audit unit head of a Federal entity and the entity head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment and the head of an establishment, respectively.

(4)(A) The provisions of section 7 shall apply to an internal audit unit head of a Federal entity in the same manner as such provisions apply to an Inspector General of an establishment.

(B) The provisions of section 7 shall apply to any employee of a Federal entity in the same manner as such provisions apply to an employee of an establishment.

(5) Notwithstanding subsection (h)(2), for purposes of this subsection, the term 'Federal entity' means ACTION, Amtrak, the Equal Employment Opportunity Commission, the Federal Deposit Insurance Corporation, the Federal Emergency Management Agency, the Federal Home Loan Bank Board, the National Archives and Records Administration, the National Science Foundation, the Nuclear Regulatory Commission, the Panama Canal Commission, the Peace Corps, the Office of Personnel Management, and the United States Information Agency.

(h) For purposes of this section:

(1) The term "entity head" means the director, administrator, president, chairman, or other chief officer of a Federal entity.

(2) The term "Federal entity" has the same meaning as is given to the term 'agency' in section 552(e) of title 5, United States Code, except that such term shall not include—

(A) an establishment (as defined in section 11(2) of this Act);

(B) the Executive Office of the President;

(C) the Department of Justice;

(D) the Department of the Treasury;

(E) the Central Intelligence Agency;

(F) the United States Postal Service;

(G) the General Accounting Office; or

(H) any entity in the judicial or legislative branches of the Government (including the Administrative Office of the United States Courts and the Architect of the Capitol and any activity under the direction of the Architect of the Capitol).

(3) The term "internal audit unit" means an office, unit, or other component of a Federal entity which carries out audits, or audits and investigations, for the purpose of reviewing the programs and operations of such entity, but does not include an office, unit, or other component of such entity which carries out audits or investigations as an integral part of the programs or operations of such entity.

(4) The term "internal audit unit head" means the director or other chief officer of an internal audit unit.

§ 9. Transfer of functions

(a) There shall be transferred—

(1) to the Office of the Inspector General—

(A) of the Department of Agriculture, the offices of that department referred to as the "Office of Investigations" and the "Office of Audit";

(B) of the Department of Commerce, the offices of the department referred to as the "Office of Audits" and the "Investigations and Inspections Staff" and that portion of the office referred to as the "Office of Investigations and Security" which has responsibility for investigation of alleged criminal violations and program abuse;

(C) of the Department of Defense, the offices of that Department referred to as "Defense Audit Service" and the "Office of Inspector General, Defense Logistics Agency", and that portion of the office of that department referred to as the "Defense Investigative Service" which has responsibility for investigation of alleged criminal violations;

(D) of the Department of Education, all functions of the Inspector General of Health, Education, and Welfare or the Office of Inspector General of Health, Education, and Welfare relating to functions transferred by section 301 of the Department of Education Organization Act [20 U.S.C.A. 3441];

(E) of the Department of Energy, the "Office of Inspector General" (as established by section 208 of the Department of Energy Organization Act);

(F) of the Department of Health and Human Services, the "Office of Inspector General" (as established by title II of Public Law 94-505);

[(E)**]** *(G)* of the Department of Housing and Urban Development, the office of that department referred to as the "Office of Inspector General";

[(F)**]** *(H)* of the Department of the Interior, the office of that department referred to as the "Office of Audit and Investigation";

[(G)**]** *(I)* of the Department of Labor, the office of that department referred to as the "Office of Special Investigations";

[(H)] *(J)* of the Department of Transportation, the offices of that department referred to as the "Office of Investigations and Security" and the "Office of Audit" of the department, the "Office of Investigations and Security, Federal Aviation Administration", and "External Audit Divisions, Federal Aviation Administration", the "External Audit Divisions, Federal Aviation Administration", the "Investigations Division and the External Audit Division of the Office of Program Review and Investigation, Federal Highway Administration" and the "Office of Program Audits Urban Mass Transportation Administration";

[(I) of the Community Services Administration, the offices of that agency referred to as the "Inspections Division", the "External Audit Division", and the "Internal Audit Division";]

[(J)] *(K)* of the Environmental Protection Agency, the offices of that agency referred to as the "Office of Audit" and the "Security and Inspection Division";

[(K)] *(L)* of the General Services Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

[(L) *(M)* of the National Aeronautics and Space Administration, the offices referred to as the "Management Audit Office" and the "Office of Inspections and Security";

[(M)] *(N)* of the Small Business Administration, the office of that agency referred to as the "Office of Audits and Investigations"; and

[(N)] *(O)* of the Veterans' Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations"; and

(2) such other offices or agencies, or functions, powers, duties thereof, as the head of the establishment involved may determine are properly related to the functions of the Office and world, if so transferred, further the purposes of this Act.

* * * * * * *

§ 11. Definitions

As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, *Energy, Health and Human Services,* Housing and Urban Development, the Interior, Labor, State, or Transportation or the Administrator of the Agency for International Development, [Community Services,] Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs, as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, *Energy, Health and Human Services,* Housing and Urban Development, the Interior, Labor, State, or Transportation or the Agency for International Development, [the Community Services Administration,] the Environmental Protection Agency, the General Services Adminstration, the National Aeronautics and Space

Administration, the Small Business Administration, or the Veterans' Administration, as the case may be;

(3) the term "Inspector General" means the Inspector General of an establishment;

(4) the term "Office" means the Office of the Inspector General of an establishment; and

(5) the term "Federal agency" means as agency as defined in section 552(e) of Title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office.

* * * * * * *

PUBLIC LAW 95-91 [S. 826]; AUG. 4, 1977

DEPARTMENT OF ENERGY ORGANIZATION ACT

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* * * * * * *

[SEC. 208. (a)(1) There shall be within the Department an Office of Inspector General to be headed by an Inspector General, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to, and be under the general supervision of, the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

[(2) There shall also be in the Office a Deputy Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall, during the absence or temporary incapacity of the Inspector General, or during a vacancy in that Office, act as Inspector General.

[(3) The Inspector General or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

[(4) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.

[(5) The Inspector General shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and the Deputy Inspector General shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

[(b) It shall be the duty and responsibility of the Inspector General—

[(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to the promotion of economy and efficiency in the administration of, or the prevention or detection of fraud or abuse in, programs and operations of the Department;

[(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in its programs and operations;

[(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, and (B) the identification and prosecution of participants in such fraud or abuse;

[(4) to keep the Secretary and the Congress fully and currently informed, by means of the reports required by subsection (c) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action; and

[(5) to seek to coordinate his actions with the actions of the Comptroller General of the United States with a view to avoiding duplication.

[(c) The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary, to the Federal Energy Regulatory Commission, and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to—

[(1) an identification and description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities;

[(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiencies identified and described under paragraph (1);

[(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and

[(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.

[(d) The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and, within thirty days thereafter, to the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.

[(e) The Inspector General (1) may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (2) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within their jurisdiction, by any committee or subcommittee thereof.

[(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary, to the Federal Energy Regulatory Commission, if applicable, and to the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide copies of the reports required under subsection (c) to the Secretary and the Commission, if applicable, sufficiently in advance of the due date for the submission to Congress to provide a reasonable opportunity for comments of the Secretary and the Commission to be appended to the reports when submitted to Congress.

[(g) In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, is authorized—

[(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to programs and operations with respect to which the Inspector General has responsibilities under this section;

[(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and

[(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions under this section.]

PUBLIC LAW 96-294 [S. 932]; June 30, 1980

ENERGY SECURITY ACT

* * * * * * *

INSPECTOR GENERAL

SEC. 122. (a)

* * * * * * *

(5) The Inspector General and the Deputy Inspector General shall be compensated at a rate fixed by the Board of Directors in accordance with section 117(b)(2), which rate the Inspector General shall be not less than the rate provided for [level III of the Executive Schedule under section 5314] *level IV of the Executive Schedule under section 3515* of title 5, United States Code, and for the Deputy Inspector General not less than the rate provided for [level IV of such schedule under section 5315] *level V of such schedule under section 5316* of title 5, United States Code.

* * * * * * *

PUBLIC LAW 94-505 [H.R. 11347]; Oct. 15, 1976

SHRINERS' HOSPITAL FOR CRIPPLED CHILDREN—COLORADO CORPORATION—CONVEYANCE

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Administrator to General Services is authorized, subject to section 2 of this Act to convey to the Shriners' Hospitals for Crippled Children, a Colorado corporation, without consideration, all right, title, and interest remaining in the United States in and to the following described land, being a portion of the tract conveyed to Shriners' Hospitals for Crippled Children by deed of July 12, 1946, pursuant to the Act entitled "An Act to authorize the Secretary of War to convey certain lands situated within the Fort Douglas Military Reservation to the Shriners' Hospitals for Crippled Children", approved March 14, 1946 (60 Stat. 55):

Beginning at a point north 0 degree 01 minutes 57 seconds west 42.07 feet and south 75 degrees 09 minutes 12 seconds east 34.14 feet from a Salt Lake City monument at the intersection of Eleventh Avenue and Virginia Street, such point being further described as north 529.37 feet and east 268.85 feet from the southwest corner of the northwest quarter of section 33, township 1 north, range 1 east, Salt Lake base and meridian; running thence south 0 degrees 01 minutes 57 seconds east 30.76 feet; thence south 87 degrees 50 minutes 03 seconds east 135.45 feet; thence north 75 degrees 09 minutes 12 seconds west 140.04 feet to the point of beginning.

SEC. 2. (a) The conveyance to be made under this Act shall be subject to the condition that the transferee, the Shriners' Hospitals for Crippled Children, shall reconvey or dedicate the land specifically described in the first section of this Act to Salt Lake County, Utah, for street construction purposes.

(b) The costs of any survey necessary as an incident to the conveyance authorized by this Act shall be borne by the Shriners' Hospitals for Crippled Children.

[TITLE II—OFFICE OF INSPECTOR GENERAL

[SEC. 201. In order to create an independent and objective unit—

[(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Health, Education, and Welfare;

[(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy and efficiency in the administration of, and (B) to prevent and detect fraud and abuse, in, such programs and operations; and

[(3) to provide a means for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

there is hereby established in the Department of Health, Education, and Welfare an Office of Inspector General.

[OFFICERS

[SEC. 202. (a) There shall be at the head of the Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to and be under the general supervision of the Secretary or, to the extent such authority is delegated, the Under Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

[(b) There shall also be in the Office a Deputy Inspector General appointed by the President, by and with the advice and consent of the Seante, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall during the absence or temporary incapacity of the Inspector General, or during a vacancy in that office, act as Inspector General.

[(c) The Inspector General or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

[(d) The Inspector General and the Deputy shall each be subject to the provisions of subchapter III of chapter 73, title 5, United States Code, notwithstanding any exemption from such provisions which might otherwise apply.

[(e) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

[(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of the functions, powers, and duties transferred by section 6(a)(1), and

[(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of the functions, powers, and duties transferred by section 6(a)(2).

[DUTIES AND RESPONSIBILITIES

[SEC. 203. (a) It shall be the duty and responsibility of the Inspector General—

[(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to programs and operations of the Department;

[(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and defecting fraud and abuse in, its programs and operations;

[(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to (A) all matters relating to the promotion of enconomy and efficiency in the administration of, or the prevention and defection of fraud and abuse in, programs and operations administered or financed by the Department, or (B) the identification and prosecution of participants in such fraud or abuse; and

[(4) to keep the Secretary and the Congress fully and currently informed by means of the reports required by section 4 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses and deficiencies, and to report on the progress made in implementing such corrective action.

[(b) In carrying out the responsibilities specified in subsection (a)(1), the Inspector General shall have authority to approve or disapprove the use of outside auditors or to take other appropriate steps to insure the competence and independence of such auditors.

[(c) In carrying out the duties and responsibilities provided by this Act, the Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view to avoiding duplication and insuring effective coordination and cooperation.

[(d) The Inspector General shall establish within his office an appropriate and adequate staff with specific responsiblity for devoting their full time and attention to antifraud and antiabuse activities relating to the medicaid, medicare, renal disease, and maternal and child health programs. Such staff shall report to the Deputy.

[REPORTS

[SEC. 204. (a) The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to—

[(1) an identification and description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities;

[(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiencies identified and described under paragraph (1);

[(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and

[(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.

[(b) The Inspector General shall make reports on a quarterly basis to the Secretary and to the appropriate committees or subcommittees of the Congress identifying any significant problems, abuses, or deficiencies concerning which the Office has made a recommendation for corrective action and on which, in the judgment of the Inspector General, adequate progress is not being made.

[(c) The Inspector General shall report immediately to the Secretary, and within seven calendar days thereafter to the appropriate committees or subcommittees of the Congress, whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.

[(d) The Inspector General (A) may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (B) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to such matters within their jurisdiction, by any committee or subcommittee thereof.

[(e) Notwithstanding any other provisions of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary and the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide copies of the reports required under subsections (a) and (b) to the Secretary sufficiently in advance of the due date for their submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.

[AUTHORITY; ADMINISTRATION PROVISIONS

[Sec. 205. (a) In addition to the authority otherwise provided by this Act, the Inspector General, in carrying out the provisions of this Act, is authorized—

[(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Department which relate to programs and operations with respect to which the Inspector General has responsibilities under this Act;

[(2) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided

by this Act from any Federal, State, or local governmental agency or unit thereof;

[(3) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court;

[(4) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

[(5) in the event that a budget request for the Office of Inspector General is reduced, before submission to Congress, to an extent which the Inspector General deems seriously detrimental to the adequate performance of the functions mandated by this Act, the Inspector General shall so inform the Congress without delay;

[(6) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

[(7) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5, United States Code;

[(8) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

[(b)(1) Upon request of the Inspector General for information or assistance under subsection (a)(2), the head of any Federal agency involved shall, insofar as is practicable, and not in contravention of any existing statutory restriction, or regulation of the Federal agency from which the information is requested, furnish to the Inspector General, or to an authorized designee, such information or assistance.

[(2) Whatever information or assistance requested under subsection (a)(1) or (a)(2) is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Secretary and to the appropriate committees or subcommittees of the Congress without delay.

[(3) In the event any record or other information requested by the Inspector General under subsection (a)(1) or (a)(2) is not considered to be available under the provisions of section 552a(b) (1), (3), or (7) of title 5, Uhited States Code, such record or information shall be available to the Inspector General in the same manner and to the same extent it would be available to the Comptroller General.

[(c) The Secretary shall provide the Inspector General and his staff with appropriate and adequate office space at central and field office locations of the Department, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

[(d) (1) The Inspector General shall receive compensation at the rate provided for level IV of the Executive Schedule by section 5315 of title 5, United States Code.

[(2) The Deputy shall receive compensation at the rate provided for level V of the Executive Schedule by section 5316 of title 5, United States Code.

[TRANSFER OF FUNCTIONS

[SEC. 206. (a) There are hereby transferred to the Office of Inspector General the functions, powers, and duties of—

[(1) the agency of the Department referred to as the "HEW Audit Agency";

[(2) the office of the Department referred to as the "Office of Investigations"; and

[(3) such other offices or agencies, or functions, powers, or duties thereof, as the Secretary may, with the consent of the Inspector General, determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act.

except that there shall not be transferred to the Inspector General under clause (3) program operating resonsibilities.

[(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of any office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the Office of Inspector General.

[(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

[(d) In any case where all the functions, powers, and duties of any office or agency are transferred pursuant to this subsection, such office or agency shall lapse. Any person who, on the effective date of this Act, held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in the Office to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

[DEFINITIONS

[SEC. 207. As used in this Act—

[(1) the term "Secretary" means the Secretary of Health, Education, and Welfare;

[(2) the term "Department" means the Department of Health, Education, and Welfare;

[(3) the term "Inspector General" means the Inspector General of the Department;

[(4) the term "Deputy" means the Deputy Inspector General of the Department; and

[(5) the term "Federal agency" means an agency as defined in section 552(e) of title 5, United States Code, but shall not be construed to include the General Accounting Office.]

APPENDICES

APPENDIX A

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

May 19, 1986

Mr. Franklin G. Polk
Chief Counsel/Staff Director
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Polk:

On January 22, 1986, Senator Roth introduced S. 2005, "to amend the Inspector General Act of 1978." This bill, referred to the Committee on Governmental Affairs, would, in part, extend the major duties, responsibilities and authorities of the statutory Inspectors General to directors of audit units in nonestablishment agencies. Thereafter, the Chairman of the President's Council on Integrity and Efficiency (PCIE) requested the members of the PCIE and of the Coordinating Conference to provide information and opinions on the proposed bill, based upon their experience as statutory Inspectors General and audit directors or inspectors general in nonestablishment executive agencies, to appropriate Governmental Affairs Committee staff. To that end, a working group comprised of the Inspectors General of the Departments of Health and Human Services and the Interior (members of the PCIE), and the Inspector General of the Office of Personnel Management (member of the Coordinating Conference), was appointed. The views and information that we are providing herein are based upon our collective experience as Inspectors General and are provided independently of the Administration.

First of all, we strongly agree with Senator Roth's goal to ensure the independence and effectiveness of internal audit units throughout the Federal Government. Accordingly, we believe that provisions that would (1) require each audit unit director be appointed by the head of the Federal entity, (2) require that the audit unit director report directly to the head of the Federal entity (or the officer next in rank), (3) prohibit interference in the conduct of audits, (4) insulate audit units from program operating responsibilities, and (5) require that if the audit unit director is removed, the head of the Federal entity must report the reasons therefor to Congress would be most effective in achieving that goal. Further, such provisions would be consistent with published General Accounting Office and American Institute of Certified Public Accountants audit standards. Such provisions would readily achieve the necessary degree of independence and thereby enhance the effectiveness of all internal audit units whatever their size and capability.

However, the various agencies and the respective internal audit units that would be affected by S. 2005 vary widely in size, mission, need for increased responsibility, and capability of assuming increased duties and responsibilities. Thus, given the diversity of the entities that

would be affected, we believe that careful consideration of the actual needs and capability of the various internal audit units should be part of the process of extending the full panoply of duties and responsibilities in the Inspector General Act of 1978 to all of those audit units.

The wide diversity of the internal audit units and their respective agencies is amply illustrated by the results of a brief telephone survey of the members of the PCIE's Coordinating Conference. (We have enclosed a chart summarizing the audit/investigation functions of the Conference members. However, please note that the brief telephone survey conducted by staff of the Inspector General of the Office of Personnel Management was intended only to provide preliminary working information to the members of our working group and was not intended to be a comprehensive study or analysis.) Based on the information compiled, we have concern as to whether some of the internal audit offices would be equipped to assume responsibilities such as legislative and regulatory reviews, receipt and investigation of employee complaints, coordination of relationships with State and local governments, and the like. For example, of the 27 members of the PCIE Coordinating Conference polled, 11 have a staff size of fewer than 10 employees. The smallest of these offices consists of only one auditor, with an annual budget of $80,000. We are concerned that the imposition of substantial new responsibilities on such small offices may actually reduce audit coverage by redirecting the work of the few staff members to the new administrative tasks. Moreover, only 9 of the Conference members are currently performing a full range of investigations, and many of the audit units currently do not perform investigations. To require auditors to conduct potentially criminal investigations without the necessary training and experience or immediate supervision by a trained investigator could hinder the effectiveness and success of such investigations and any subsequent prosecutions, and might, in extreme cases, subject the auditor or the Federal Government to potential liability.

In addition to the information on the staff size of and activities performed by the members of the Coordinating Conference, the survey showed the wide diversity of their respective agencies. For example, the survey showed that 10 of the agencies have audit/investigative functions other than their internal audit units; moreover, in 5 of these agencies, the other audit/investigative function is integral to the mission of the agency. Based upon the experience of some of the statutory Inspectors General in departments or agencies with programmatic law enforcement functions, we believe that consideration should be given to providing clear delineation between the internal audit/investigation function contemplated by the Inspector General Act of 1978 and the programmatic law enforcement functions in some of the covered agencies. Such delineation was provided in the legislative history of the Department of Energy Organization Act (establishing that Inspector General) to ensure that the Department's Inspector General function and the Department's

Economic Regulatory Administration law enforcement function did not conflict. Similarly, in other departments, such as the Department of the Interior with both a statutory inspector general and a programmatic law enforcement function such as that of the Bureau of Indian Affairs, the two offices negotiate memoranda of understanding to provide procedures to clarify their jurisdictional boundaries in general and in specific cases. Such legislative history and/or internal resolution is necessary to help prevent any, inadvertent or otherwise, incursion into the inspector general's jurisdiction or viceversa.

We appreciate the opportunity to share with you our views on this matter. If we can be of further assistance, please call on us.

Sincerely,

Richard P. Kusserow By JRR
Richard P. Kusserow
Inspector General
Department of Health and Human Services

James R. Richards
James R. Richards
Inspector General
Department of the Interior

Enclosure

SUMMARY OF AUDIT/INVESTIGATION FUNCTIONS OF COORDINATING CONFERENCE MEMBERS

MAY 16 1986

	AGENCY	SIZE OF STAFF 25+	11-24	0-10	EXTENT OF UNITS' ACTIVITIES: FULL RANGE OF INVESTIG	ADMINIST INVESTIG	AUDIT ONLY	UNIT RECEIVES ALLEGATI	CRIMINAL INVESTIG ON STAFF	SUBPOENA POWER	IND. ENF. OR REGULAT. BODY	OTHER AGENCY AUDIT/ INVESTIG	OTHER A/I FUNCTION INTEGRAL TO AGENCY	
1	TENN. VALLEY AUTHORITY	X			X			X	X			X		1
2	FED. DEPOSIT INS. CORP.	X			X			X			X	X		2
3	AMTRAK	X					X					X	X	3
4	U. S. INFORMATION AGENCY	X			X			X	X					4
5	OFFICE OF PERSONNEL MGMT.	X			X			X			X	X	X	5
6	FED. EMERG. MGMT. AGENY	X			X			X	X					6
7	NUCLEAR REGULATORY COMMIS	X				X		X	X	X	X	X	X	7
8	FED. ELECTION COMMISSION		X				X				X	X	X	8
9	NTL. SCIENCE FOUNDATION		X				X							9
10	EQUAL EMPLOYMENT OP. COMM		X		X			X	X		X	X		10
11	ACTION		X			X		X						11
12	FED. HOME LOAN BANK BOARD		X		X			X	X	X	X			12
13	SYNTHETIC FUEL CORPORATIO		X		X			X		X				13
14	PEACE CORPS		X		X			X				X		14
15	NTL. LABOR RELATIONS BRD.			X			X				X			15
16	FARM CREDIT ADMINISTRATIO			X			X				X			16
17	NATIONAL ARCHIVES			X			X							17
18	FED. COMMUNICATIONS COMM.			X		X		X			X			18
19	EXPORT-IMPORT BANK			X			X							19
20	PENSION BEN. GAR. CORP.			X		X		X						20
21	SECURITIES & EXCHANGE COM			X			X				X	X	X	21
22	COMM. FUT. TRADING COMM.			X			X				X			22
23	NTL. CREDIT UNION ADMIN.			X			X				X			23
24	CONSUMER PROD SAFETY COMM			X			X				X			24
25	MERIT SYSTEM PROT BRD.			X		X		X			X	X		25
26	FEDERAL TRADE COMMISSION			X			X				X			26
		7	7	12	9	5	12	14	6	3	15	10	5	

NOTE: THIS CHART IS INTENDED TO DEMONSTRATE THE DIVERSITY OF THOSE AUDIT UNITS AND THEIR RESPECTIVE AGENCIES WHICH COMPRISE THE PCIE COORDINATING CONFERENCE. THE ATTACHED SUMMARIES PROVIDE ADDITIONAL DETAIL.

Agencies With Audit and/or Investigative Units Not Subject to IG Legislation

Dollars in millions

Agency name and mission[a]	Total agency staff size FY 1985[b]	Budget authority[c] FY 1984[d]	Budget authority[c] FY 1985	Size of A/I staff[e]
ACTION ACTION's purpose is to mobilize Americans for voluntary service throughout the United States through programs which help meet basic human needs and support the self-help efforts of low-income individuals and communities.	481	$ 135.6	$ 149.3	13
Commodity Futures Trading Commission The Commission regulates trading on futures exchanges, commodity exchange members, public brokerage houses, Commission-registered futures industry sales people, and commodity trading advisors.	567	26.7	27.6	4
Consumer Product Safety Commission The purpose of the Consumer Product Safety Commission is to protect the public against unreasonable risks of injury from consumer products, to assist consumers to evaluate the comparative safety of consumer products, to develop uniform safety standards for consumer products and minimize conflicting state and local regulations, and to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.	502	35.3	36.0	3
Corporation for Public Broadcasting The Corporation for Public Broadcasting has two major activities: (1) direct payments to public television and radio stations to be used at their discretion for purposes related primarily to program production or acquisition and (2) support for the production and acquisition of radio and television programs for national distribution.	102	137.5	150.5	10
Equal Employment Opportunity Commission The purposes of the Equal Employment Opportunity Commission are to eliminate discrimination based on race, color, religion, sex, national origin, or age in hiring, promoting, firing, wages, testing, training, apprenticeship, and all other conditions of employment.	3,107	154.0	163.7	16
Export-Import Bank The Export-Import Bank of the United States aids in financing exports of U.S. goods and services. It has implemented a variety of programs to meet the needs of the U.S. exporting community.	341	829.2	3,939.7	5
Farm Credit Administration The Farm Credit Administration is responsible for the supervision, examination, and coordination of the borrower-owned banks and associations that make up the cooperative farm credit system.	287	None	None	9
Federal Communications Commission The Federal Communications Commission regulates interstate and foreign communications by radio, television, wire, and cable. It is responsible for the orderly development and operation of broadcast services and the provision of rapid, efficient nationwide and worldwide telephone and telegraph services at reasonable rates. It also promotes safety of life and property through radio and the use of radio and television facilities to strengthen the national defense.	1,818	$ 89.0	$ 95.4	4

Agency name and mission[a]	Total agency staff size FY 1985[b]	Budget authority[b] FY 1984[b]	Budget authority[b] FY 1985	Size of A/I staff[c]
Federal Deposit Insurance Corporation The Federal Deposit Insurance Corporation was established to promote and preserve public confidence in banks and to protect the money supply through provision of insurance coverage for bank deposits and periodic examinations of insured state-chartered banks which are not members of the Federal Reserve System.	3,554	None	None	71
Federal Election Commission The Federal Election Commission administers, formulates, and seeks to obtain compliance with the campaign financing provisions of the Federal Election Campaign Act of 1971, as amended, and Title 26 of the United States Code.	235	10.7	13.0	1
Federal Emergency Management Agency The Federal Emergency Management Agency was created to provide a single point of accountability for all federal emergency preparedness, mitigation, and response activities. The agency is chartered to enhance the multiple use of emergency preparedness and response resources at the federal, state, and local levels of government in preparing for and responding to the full range of emergencies—natural and man-made—and to integrate into a comprehensive framework activities concerned with hazard mitigation, preparedness planning, relief operations, and recovery assistance.	2,564	658.0	529.8	42
Federal Home Loan Bank Board The Federal Home Loan Bank Board was established to encourage thrift and economical home ownership. The Bank Board supervises and regulates savings institutions, which specialize in the financing of residential real estate and are the country's major private source of financing for the construction and purchase of homes.	657	None	None	21
Federal Maritime Commission The Federal Maritime Commission regulates the waterborne foreign and domestic offshore commerce of the United States, ensures that U.S. international trade is open to all nations on fair and equitable terms, and protects against unauthorized, concerted activity in the waterborne commerce of the United States.	212	10.9	12.3	1
Federal Mediation and Conciliation Service The Federal Mediation and Conciliation Service represents the public interest by promoting the development of sound and stable labor-management relationships, preventing or minimizing work stoppages by assisting labor and management to settle their disputes through mediation, advocating collective bargaining, mediation, and voluntary arbitration as the preferred processes for settling issues between employers and representatives of employees, developing the art, science, and practice of dispute resolution, and fostering constructive joint relationships of labor and management leaders to increase their mutual understanding and the solution of common problems.	362	23.3	23.8	4
Federal Reserve System The Federal Reserve System, the central bank of the United States, is charged with administering and making policy for the nation's credit and monetary affairs. Through its supervisory and regulatory banking functions, the Federal Reserve helps keep the banking industry in sound condition, capable of responding to the nation's domestic and international financial needs and objectives.	1,614	None	None	3

Agency name and mission[a]	Total agency staff size FY 1985[b]	Budget authority[c] FY 1984[b]	Budget authority[c] FY 1985	Size of A/I staff[d]
Inter-American Foundation The Inter-American Foundation is an independent government corporation that supports social and economic development in Latin America and the Caribbean. It makes grants primarily to private, indigenous organizations that carry out self-help projects benefiting poor people.	67	$ 13.0	$ 12.0	1
Interstate Commerce Commission The Interstate Commerce Commission regulates interstate surface transportation, including trains, trucks, buses, water carriers, freight forwarders, transportation brokers, and a coal slurry pipeline. The Commission ensures that the carriers it regulates will provide the public with rates and services that are fair and reasonable.	839	58.8	53.5	2
Legal Services Corporation The Legal Services Corporation is a private, nonprofit organization established by the Legal Services Corporation Act of 1974 to provide financial support for legal assistance in noncriminal proceedings to persons who cannot afford legal services.	174	275.0	305.0	19
Merit Systems Protection Board The Merit Systems Protection Board protects the integrity of federal merit systems and the rights of federal employees working in the systems. In overseeing the personnel practices of the federal government, the Board conducts special studies of the merit system, hears and decides charges of wrongdoing and employee appeals of adverse agency actions, and orders corrective and disciplinary actions against an executive agency or employee when appropriate.	412	24.3	25.3	2
National Consumer Cooperative Bank The National Consumer Cooperative Bank encourages the development of new and existing cooperatives. The Bank provides specialized credit and technical assistance to eligible cooperatives that provide goods, services, housing, and other facilities to their members as ultimate consumers.	102	None	None	3
National Credit Union Administration The National Credit Union Administration is responsible for chartering, insuring, supervising, and examining federal credit unions and for administering the National Credit Union Share Insurance Fund. It also manages the Central Liquidity Facility, a mixed-ownership government corporation whose purpose is to supply emergency loans to member credit unions.	604	223.3	46.1	2
National Endowment for the Arts The goal of the National Endowment for the Arts is the fostering of professional excellence of the arts in America, to nurture and sustain them, and to help create a climate in which they may flourish so they may be experienced and enjoyed by the widest possible public.	242	162.2	163.7	7
National Endowment for the Humanities The National Endowment for the Humanities is an independent grant-making agency established by the Congress in 1965 to support research, education, and public programs in the humanities.	231	140.9	140.2	7
National Labor Relations Board The National Labor Relations Board administers the nation's laws relating to labor relations. It is vested with the power to safeguard employees' rights to organize, to determine through elections whether workers want unions as their bargaining representatives, and to prevent and remedy unfair labor practices.	3,000	$ 133.6	$ 136.9	9

Agency name and mission[a]	Total agency staff size FY 1985[b]	Budget authority[c] FY 1984[b]	Budget authority[c] FY 1985	Size of A/I staff[d]
National Railroad Passenger Corporation (Amtrak) The mission of the National Railroad Passenger Corporation is to provide a balanced national transportation system by developing, operating, and improving U.S. intercity rail passenger service.	20,656	$ 1,938.2	$ 884.0	107
National Science Foundation The National Science Foundation promotes the progress of science and engineering through the support of research and education programs. Its major emphasis is on high quality, science-driven research, the search for improved understanding of the fundamental laws of nature upon which our future well-being as a nation depends. The National Science Foundation also supports applied research in several areas. Its educational programs are aimed at ensuring increased understanding of science at all educational levels and an adequate supply of scientists and engineers to meet our country's needs.	1,033	1,328.3	1,505.5	18
National Transportation Safety Board The National Transportation Safety Board seeks to ensure that all types of transportation in the United States are safely operated. The Board investigates accidents; conducts studies; and makes recommendations to government agencies, the transportation industry, and others on safety measures and practices.	357	21.0	21.9	1
Neighborhood Reinvestment Corporation The major activities of the Neighborhood Reinvestment Corporation include the establishment of Neighborhood Housing Services and Apartment Improvement Programs in older, declining residential neighborhoods; identifying, evaluating, and supporting neighborhood preservation projects that show promise as strategies for reversing neighborhood decline; replicating successful neighborhood preservation projects; and promoting a national secondary market for local Neighborhood Housing Services' revolving loan funds.	200	16.0	15.5	1
Nuclear Regulatory Commission The Nuclear Regulatory Commission licenses and regulates the uses of nuclear energy to protect the public health and safety and the environment. It does this by licensing persons and companies to build and operate nuclear reactors and to own and use nuclear materials. The Commission makes rules and sets standards for these types of licenses. It also carefully inspects the activities of the persons and companies licensed to ensure that they do not violate the safety rules of the Commission.	3,318	465.8	443.9	29
Office of Administration, Executive Office of the President The Office of Administration, headed by the Director, provides administrative support services to all units within the Executive Office of the President, except those services which are in direct support of the President.	139	14.3	16.2	1
Office of Personnel Management (OPM) The Office of Personnel Management administers a merit system for federal employment, which includes recruiting, examining, training, and promoting people on the basis of their knowledge and skills, regardless of their race, religion, sex, political influence, or other nonmerit factors. OPM's role is to ensure that the federal government provides an array of personnel services to applicants and employees. Through a range of programs designed to develop and encourage the effectiveness of the government employee, OPM supports government program managers in their personnel management responsibilities and provides benefits to employees directly.	3,404	$ 53,087.2	$ 56,374.5	46[e]

Agency name and mission[a]	Total agency staff size FY 1985[b]	Budget authority[c] FY 1984[b]	Budget authority[c] FY 1985	Size of A/I staff[d]
Panama Canal Commission The Panama Canal Commission maintains and operates the Panama Canal and the facilities and appurtenances related thereto; coordinates the operation of the waterway and other activities with the Republic of Panama; and correlates joint actions in harbors and port areas, certain housing and public areas, and some civil protection functions.	7,635	$ 413.7	$ 429.8	19
Peace Corps The Peace Corps' purpose is to promote world peace and friendship; to help the people of other countries in meeting their needs for trained manpower; to help promote a better understanding of the American people on the part of the peoples served; and to promote a better understanding of other peoples on the part of the American people. In 1977, the Peace Corps Act was amended to emphasize the Peace Corps' commitment toward programming to meet the basic needs of those living in the poorest areas of the countries in which the Peace Corps operates.	894	117.2	127.9	10
Pension Benefit Guaranty Corporation The Pension Benefit Guaranty Corporation guarantees basic pension benefits in covered private plans if they terminate with insufficient assets.	490	None	None	6
Railroad Retirement Board[e] The Railroad Retirement Board administers comprehensive retirement-survivor and unemployment-sickness benefit programs for the nation's railroad workers and their families, under the Railroad Retirement and Railroad Unemployment Insurance Acts. In connection with the retirement program, the Board has administrative responsibilities under the Social Security Act for certain benefit payments and railroad workers' Medicare coverage.	1,518	11,392.0	12,802.6	25
Securities and Exchange Commission The Securities and Exchange Commission provides the fullest possible disclosure to the investing public and protects the interests of the public and investors against malpractices in the securities and financial markets.	2,046	94.0	106.4	4
Smithsonian Institution The Smithsonian Institution performs fundamental research; publishes the results of studies, explorations, and investigations; preserves for study and reference over 100 million items of scientific, cultural, and historical interest; maintains exhibits representative of the arts, American history, technology, aeronautics and space exploration, and natural history; participates in the international exchange of learned publications; and engages in programs of education and national and international cooperative research and training. All these activities are supported by its trust endowments, gifts, grants, and contracts, and funds appropriated to it by the Congress.	4,281	213.6	230.7	15
Tennessee Valley Authority The Tennessee Valley Authority is a government-owned corporation that conducts a unified program of resource development for the advancement of economic growth in the Tennessee Valley region. The Authority's program of activities includes flood control, navigation development, electric power production, fertilizer development, recreation improvement, and forestry and wildlife development. While its power program is financially self-supporting, other programs are financed primarily by congressional appropriations.	21,787	$ 449.7	$ 553.5	105

Appendix
Agencies with Audit and/or Investigative Units Not Subject to IG Legislation

Agency name and mission[a]	Total agency staff size FY 1985[b]	Budget authority[b] FY 1984[b]	Budget authority[b] FY 1985	Size of A/I staff[c]
United States Information Agency The United States Information Agency, formerly the United States International Communication Agency, is responsible for the U.S. government's overseas information and cultural programs, including the Voice of America and the Fulbright scholarship program.	9,351	$ 666.9	$ 797.6	43
Department of Justice The Department of Justice serves as counsel for U.S. citizens. It represents them in enforcing the law in the public interest. Through its thousands of lawyers, investigators, and agents, the Department plays the key role in protection against criminals and subversion; in ensuring healthy business competition; in safeguarding the consumer; and in enforcing drug, immigration, and naturalization laws. The Department also plays a significant role in protecting citizens through its efforts for effective law enforcement, crime prevention, crime detection, and prosecution and rehabilitation of offenders.	63,326	3,461.2	3,837.2	329
Department of the Treasury The Department of the Treasury performs four basic functions: formulating and recommending economic, financial, tax, and fiscal policies; serving as financial agent for the U.S. government; enforcing the law; and manufacturing coins and currency.	114,126	$ 17,972.8[f]	$ 17,972.2[f]	1,489
Total	**276,834**	**$ 94,793.2**	**$101,943.2**	**2,507**

[a]Most mission statements were derived from The United States Government Manual, 1984/85.

[b]Budget authority and total agency staff (full-time permanent positions) were derived from Appendix, Budget of the United States Government, FYS 1986 and 1987.

[c]Audit/investigative and support authorized staffing level as of March 31, 1986.

[d]Includes 27 auditor positions limited to auditing insurance providers.

[e]While authorizing legislation for this agency requires a statutory IG, at the time of our review, no IG had been appointed and the Office of Audit was not operating as a statutory IG office. Consequently, we included this agency in the survey. However, after our review was completed, an IG was appointed.

[f]Does not include budget authority for interest on the debt.

Calendar No. 754

99TH CONGRESS
2d Session

SENATE

REPORT
99-352

THE CONTRACT DISPUTES ACT AMENDMENTS OF 1986

JULY 31 (legislative day, JULY 28), 1986.—Ordered to be printed

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 2426]

The Committee on Governmental Affairs, to which was referred the bill (S. 2426) to amend the Contract Disputes Act of 1978 to require that a competitive examination process shall be used for the selection of members of Boards of Contract Appeals of Federal Government agencies; to provide that the members of such boards shall be treated in the same manner as Administrative Law Judges of the Federal Government for certain administrative purposes; and to revise the procedures for the collection of claims under Federal Government contracts, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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71-010

S403-9

I. Purpose

The purpose of S. 2426, the Contract Disputes Act Amendments of 1986, is to enhance the independence and timeliness of the contract dispute process, first, by providing protections for Administrative Judges who serve on agency Boards of Contract Appeals to insulate them from agency control and, second, by imposing reasonable deadlines for submitting contractor claims and for appealing contracting officers' decisions.

II. Background and Need for Legislation

In 1978, Congress enacted the Contract Disputes Act (P.L. 95–563; 41 U.S.C. 601 *et seq.*), which governs the submission of contract claims to the government and the resolution of disputes arising from those claims. While the disputes process has generally operated effectively since enactment of the Contract Disputes Act (CDA), concerns have been raised by government officials and government contractors over the independence and timeliness of the contract disputes process.

S. 2426, the Contract Disputes Act Amendments of 1986, is designed to address these concerns. The provisions of S. 2426 are drawn from two separate pieces of legislation: S. 2223, the Board of Contract Appeals Independence Enhancement Act, and S. 2006, the Contract Disputes Act Amendments of 1985. These bills were circulated widely for comment to numerous government and industry experts, revised to incorporate the comments received, and subsequently consolidated into a single bill, S. 2426.

Independence

Under the CDA, agency Boards of Contract Appeals (BCAs) are authorized to serve as independent, adjudicative forums for resolving contract disputes. Currently, there are 12 BCAs, ranging in membership from the Armed Services Board of Contract Appeals with 33 Judges to the National Aeronautics and Space Administration Board of contract Appeals with three Judges.

The CDA provides that BCA Judges shall be "selected and appointed to serve in the same manner" as Administrative Law Judges (ALJs) appointed pursuant to the Administrative Procedure Act. Implementation of the CDA, however, has resulted in significant differences. BCA Judges are selected by the individual agencies on whose boards they serve and, because the CDA is not specific on removal protections, may be dismissed without any independent review. ALJs, by contrast, are selected from a government-wide register established by the Office of Personnel Management (OPM) and may only be removed for good cause after a hearing before the Merit Systems Protection Board.

These differences, according to the General Accounting Office, contribute to the perception that BCA Judges are not as independent as ALJs. In a September 1985 report (NSIAD–85–102), the GAO found that:

> Because no independent body, like the OPM, issues government-wide regulations for the selection and appointment of board members, and because the [Contract Disputes Act] is unclear concerning any removal protections, members of boards of contract appeals are not as insulated as they could be from agency control.

The selection and appointment procedures for BCA Judges, while similar in many respects to the OPM procedures for ALJs, are of concern to the Committee. According to the legislative history underlying the CDA, the ALJ system was to be used as a model for developing and implementing a system to ensure the independence of the BCA Judges.

The CDA, however, falls short of establishing an ALJ-like system as there is no requirement that a separate agency, such as OPM, select, administer, and maintain a register of persons qualified for appointment to the BCAs. The interagency registers originally established and currently maintained by the Department of Defense and the General Services Administration continue to be used by the agencies as the primary sources for filling their vacancies. Agencies select candidates for their boards under procedures that need only comply with the eligibility requirements of the CDA, thereby raising concerns about the independence of the Judges who are charged with ruling on disputes between the agencies and their contractors.

Arbitrary removal is also of concern to the Committee, since the threat alone could potentially compromise the independence of BCA Judges. Arbitrary removal is by no means common practice, but it has happened. The GAO report, for example, points out that in 1978, the chairman and vice-chairman of the General Services Board of Contract Appeals were discharged without satisfactory explanation. While this incident may have been an isolated case, the threat, nonetheless, exists.

To alleviate the perception that BCA Judges are not sufficiently insulated from agency control, the GAO recommended that "the Congress may want to consider amending the Contract Disputes Act of 1978 . . . to give the Office of Personnel Management and the Merit Systems Protection Board roles in [the BCA Judges' selection and removal] processes."

On March 17, 1986, Senators William S. Cohen and Carl Levin, chairman and ranking minority members, respectively, of the Committee's Oversight of Government Management Subcommittee, introduced legislation (S. 2223) to implement the GAO's recommendation. This legislation, which is the predecessor to S. 2426, provided that BCA Judges would be subject to the competitive examination process applicable to ALJs, and would extend to BCA Judges the protection that they may be removed only for good cause after a hearing before the Merit Systems Protection Board.

S. 2223, the Boards of Contract Appeals Independence Enhancement Act of 1986, was circulated for comment to the following agencies and organizations: the Office of Federal Procurement Policy, the Office of Personnel Management, the Department of De-

fense, the General Services Administration, the National Aeronautic and Space Administration, the Armed Services Board of Contract Appeals, the General Services Board of Contract Appeals, the NASA Board of Contract Appeals, the General Accounting Office, the Public Contract Law Section of the American Bar Association, the Federal Bar Association, and the National Conference of Boards of Contract Appeals Members.

While all of these organizations expressed support for S. 2223, they recommended changes to strengthen the bill. Several of the agencies and organizations recommended, for example, that S. 2223 be amended to afford BCA Judges all of the statutory protections applicable to ALJs, in addition to the ones already provided in S. 2223. This recommendation, as well as several others, has been included in S. 2426.

Timeliness

Concerns have also been raised, principally by government officials, over the timeliness of the contract disputes process. Under the CDA, there currently is no statute of limitations for the submission of contractor claims, except for Navy shipbuilding claims. The Justice Department has consequently found that contractors often wait years before submitting claims for payment, thereby making adjudication of disputes difficult.

The General Accounting Office discussed the need for a time limitation on the submission of contractor claims in a January 1983 report (PLRD–83–37) assessing Admiral Rickover's recommendations to improve defense procurement. According to the GAO report, Admiral Rickover raised concerns that the lack of a time limit on the submission of claims provides an incentive to contractors to "delay submitting claims because it enables them to 'wait out' personnel turnover, obfuscate issues, and frustrate government analysis of the claim." His solution was for Congress to establish a one-year statute of limitations on the submission of contractor claims.

Both the GAO and the Department of Defense agreed with Admiral Rickover's recommendation that such a time limitation was necessary, although neither agreed to his recommended time period. The GAO stated in its January 1983 report that the "the delay allowed for claims submission has undoubtedly been a major factor in the inability to settle claims and enactment of a time limit should help."

In September 1983, the Senate enacted as part of the fiscal 1984 Department of Defense Appropriations Bill (P.L. 98–212) a provision imposing an 18-month statute of limitations on all contractor claims "arising from events" for which the government may be responsible. This provision, which extended only through the fiscal year, was compromised in conference to apply to shipbuilding claims. In June 1984, the Senate subsequently adopted as part of the fiscal 1985 Department of Defense Authorization Bill (P.L. 98–525) a provision that made the 18-month statute of limitations for shipbuilding claims permanent law.

The Committee notes that, during floor consideration of the DoD Authorization bill, both Senator Ted Stevens and Senator Sam Nunn, chairman of the Defense Appropriations Subcommittee and

ranking minority member of the Armed Services Committee, respectively, expressed support for establishing a generic statute of limitations that applied to all defense contractor claims, not just to shipbuilding claims.

This Congress, the Administration included as part of its management initiatives a legislative proposal for a generic 18-month statute of limitations for all contractor claims. On January 22, 1986, Senator William V. Roth, Jr. introduced, by request, this portion of the package as S. 2006, the Contract Disputes Act Amendments of 1985. The Committee held a hearing on February 26 to consider the Administration's management initiatives and received testimony from the Office of Management and Budget and the General Accounting Office. The Oversight Subcommittee, which had referral over S. 2006, also requested comments from several other organizations, including the ABA Public Contract Law Section.

The testimony and comments received were, again, supportive of the legislation, but recommended changes. The statute of limitations, for example, was subject to much debate concerning the length of the filing period and the starting date for when this period should begin. S. 2006 was modified to reflect these comments and subsequently merged into S. 2426.

Proposed Solution

On May 8, Senators Cohen and Levin introduced new legislation, S. 2426, the Contract Disputes Act Amendments of 1986, to remedy the concerns raised over the independence and timeliness of the contract disputes process. Title I incorporates language from S. 2223, the Board of Contract Appeals Independence Enhancement Act, that provides protections for Administrative Judges who serve on agency BCAs to insulate them from agency control. Title II adopts revised language from S. 2006, the Contract Disputes Act Amendments of 1985, that imposes reasonable deadlines for submitting contractor claims and for appealing contracting officer's decisions.

On May 15, the Oversight Subcommittee approved S. 2426 unanimously. The Governmental Affairs Committee subsequently ordered the bill reported on June 25, again unanimously.

III. Provisions of S. 2426

TITLE I: PROFESSIONAL INDEPENDENCE OF BCA JUDGES

Competitive Service

S. 2426 clarifies that BCA Judges, like ALJs, would be placed in the competitive service, subject to the competitive examinations conducted by the Office of Personnel Management. Concern had been raised that the previous bill, S. 2223, was unclear about whether BCA Judges would be placed in the competitive service. S. 2426 clarifies any ambiguity by amending the bill to read (changes in italic):

> . . . members of agency boards shall be *in the competitive service,* selected *pursuant to the competitive examination process under subchapter I of chapter 33 of title 5, United States Code,* and appointed . . .

The Committee intends, moreover, that individuals selected from the OPM register for appointment as BCA Judges would be career absolute appointments, as are ALJs. This stipulation is necessary becasue it has long been recognized that probationary on career-conditional appointments are incompatible with the judicial function and with the exercise of decisional independence.

Examination and Register

The comments received also recommended that the examination for BCA Judges should take into consideration the requirement under the Contract Disputes Act for five years public contract law experience, and also that those candidates qualified to serve as BCA Judges should be placed on a register separate from ALJs. To implement these recommendations, S. 2426 requires that:

> Such competitive examination shall be designed to demonstrate, among other appropriate qualifications, the applicant's public contract law experience. A separate register shall be established and maintained for candidates eligible for appointment to such boards.

The ABA Public Contract Law Section believes this provision is particularly important, according to a June 11, 1986, letter to Senator Cohen from Section President James Myers, as it will "insure that professionally competent individuals with specific subject-matter experience are appointed as BCA members." Public contract law, according to the Section," is sufficiently complex to require this additional expertise."

Delegation of Competitive Examination

Under present law (5 U.S.C. 1104), OPM is authorized to delegate its responsibilty for admimistering competitive examinations to the heads of other agencies. Section 1104(a)(2) of title 5, however, prohibits the delegation of this responsibility in the case of competitive examinations for ALJs.

Absent specific language prohibiting the delegation of responsibility for examining BCA Judges, the bill could be construed to permit the individual agencies to operate and manage the selection process for members of their BCAs. The result, according to an April 22, 1986, letter to Senator Cohen from Judge Carroll Dicus, President of the National Conference of Boards of Conference Appeals Members, "would be that the independence of members of boards of contract appeals from their sponsoring agency management would be compromised and the bill would not accomplish its intended purpose."

The Committee agrees and believes that this prohibition should apply to the selection of BCA Judges. S. 2426, therefore contains such a provision.

Removal and Performance Protections

In order to ensure that BCA Judges are truly insulated from agency control, S. 2426 extends to them the full panoply of ALJ protections. Perhaps most important of these protections is the removal protection (5 U.S.C. 7521) that provides that a BCA Judge may only be removed for good cause after a hearing before the

Merit Systems Protection Board. Additional protections provided under S. 2426 include exemption from performance evaluations (5 U.S.C. 4301), guarantee of periodic step increases (5 U.S.C. 5335), and permission for reemployment in certain cases (5 U.S.C. 3323(b)(2)).

The Committee believes that these protections are crucial for ensuring the decisional independence of the BCA Judges.

Grandfathering Incumbents

Finally, the American Bar Association Public Contract Law Section strongly recommended that present BCA Judges should be "grandfathered." Aside from the administrative expense of having to qualify the existing BCA Judges, the Committee agrees with the ABA that it would be inappropriate to subject existing BCA Judges to an examination. S. 2426, therefore, specifies that numbers of agency Boards of Contract Appeals serving on the date of enactment shall be considered to have been examined, selected, and appointed in accordance with the Contract Disputes Act of 1978, as amended by this legislation.

Together, the provisions of title I provide the security needed to ensure the independence of the BCA Judges in adjudicating contract disputes.

Senator Cohen received several letters from organizations, expressing their support for the legislation. In a June 3 letter, Harry Van Cleve, General Counsel of the General Accounting Office, stated:

> We are pleased that the language of S. 2426 addresses the concerns about the independence of BCA members identified in our earlier report, and that it addresses the technical concerns raised in our earlier letter.

James Myers, Chairman of the ABA Public Contract Law Section of the American Bar Association, wrote in the June 11 letter to Senator Cohen:

> S. 2426 has been drafted to guarantee expressly that BCA members are appointed strictly on the basis of merit, and that in conducting proceedings and deciding cases they would not be subject to direction or control by procuring agency management authorities. The express authorization of this procedure is essential to insure and maintain fairness and competency in the hearing examiner system.

Judge Carroll Dicus, President of the National Conference of Boards of Contract Appeals Members, endorsed S. 2426 in a May 16 letter to Senator Cohen:

> S. 2426 would strengthen the independence of the boards by treating administrative judges serving on boards the same as administrative law judges. It is the best vehicle yet proposed for accomplishing the original goals of the Contract Disputes Act of 1978 regarding performance and tenure. The Conference strongly supports its enactment.

Finally, Judge Joseph Kennedy, writing on behalf of the Committee on the Administrative Judiciary of the D.C. Chapter of the Federal Bar Association, stated in a May 15 letter to Senator Cohen:

> S. 2223 as revised and reintroduced as S. 2426, the Contract Disputes Act Amendments of 1986, incorporates the objectives expressed to you in our [previous] letter. . . . Accordingly, this is to advise you that we support S. 2426.

TITLE II: CLAIMS BY FEDERAL GOVERNMENT CONTRACTORS

Statute of Limitations for Submitting Claims

S. 2426 amends the CDA to require contractors to submit claims to a contracting officer for resolution within 36 months of the first date on which such claim could have been submitted. In establishing a limitation for the submission of contractor claims, the Committee deliberated carefully over the length of the limitation and the starting date from when it should run.

While the Committee believes that an 18-month statute of limitations for the submission of contractor claims—as currently prescribed by law for shipbuilding claims and originally proposed in the Administration's bill—is fair and workable, the Committee settled on a 36-month limitation as a compromise between those who support a shorter time period, those who advocate a longer one, and those who oppose any limitation.

According to the January 1983 GAO report, Admiral Rickover, for one, believed that a one-year statute of limitations was necessary because contractors otherwise "wait several years to determine whether or not a particular contract was profitable and, if not, go back and establish items which they could claim were changes that added work or delayed completion."

Current law, as previously mentioned, provides for an 18-month deadline of the submission of shipbuilding claims. In the legislative history accompanying this provision, the Senate Armed Services Committee reported that an 18-month statute of limitations for shipbuilding claims is a "sufficient time for contractors to assess the consequences of an event, assemble all pertinent documentation to support their claimed amount, and submit this documentation with their claim properly certified as provided in the Contract Disputes Act of 1978."

Earlier this year, the Administration proposed that this 18-month statute of limitations apply across-the-board to all contractor claims. In testimony before the Governmental Affairs Committee on the Administration's bill, S. 2006, Charles Bosher, the Comptroller General, supported an 18-month deadline for the submission of contractor claims.

The Public Contract Law Section of the American Bar Association, however, contends that an 18-month statute of limitations is "an unrealistically short period for submission of claims, especially where complex contractual arrangements and complex facts are involved." The Section believes that, at a minimum, any limitation period should be substantially longer than 18 months. In the June 1986 letter to Senator Cohen, Mr. Myers stated that:

> It would be preferable for the Committee to extend the statute of limitations in section 201 [of S. 2426] to four years, although three years would be acceptable if made applicable to contractors and the government.

In light of these disparate positions, the Committee sought to reach a middle ground in balancing the needs of the government against those of the contractor. The GAO, in its January 1983 report, summarized some of the factors that the Committee considered in reaching this balance.

> The shorter the time limit, the greater the probability of numerous "protective filings" by contractors. The risk could be reduced by an increased time limit, but if it is too lengthy, there would be no assurance of timely claims submissions.

The Committee believes that a 36-month statute of limitations achieves an appropriate balance.

Of equal import is the starting date on which the statute of limitations begins to run. S. 2426 states that the period for submitting claims to the government begins "the first date on which the claim could have been submitted." The Committee intends that the interpretation of this starting date should parallel, not alter, the interpretation of the "arising out of events" starting date provided in current law for shipbuilding claims. In the case of government furnished equipment, for example, the reasonable and appropriate interpretation of "the first date on which the claim could have been submitted" is when a defect in the equipment is discovered, not when the equipment was received.

Uniform Time Periods for Appeal

The second provision of this title establishes a uniform time period of six months within which a contractor may appeal a contracting officer's decision to either the Court of Claims or a Board of Contract Appeals. A contractor currently has 12 months to appeal a contracting officer's decision to the court or 90 days to appeal to a BCA. The Administration originally recommended that these inconsistent time periods be eliminated by requiring either appeal to be made within 90 days. The Committee believes that, while 90 days is sufficient time to file an appeal before a BCA, it is insufficient time to submit a fully articulated complaint to the Court of Claims. The Committee, therefore, settled on a uniform time period of six months.

IV. Conclusion

Ensuring the independence of the BCA Judges and improving the timeliness of the submission of contractor claims are steps that would strengthen the contract disputes process. The Committee believes it is important to note, however, that its criticism of the present BCA system should not be interpreted as an indictment against those Judges now serving on the various boards. Clearly, the decisional history of these boards demonstrates the integrity of the Judges who serve on them. By providing BCA jusges with statutory protections, the Committee believes that purlic confidence in

the independence and impartiality of these adjudicators would be enhanced. Enactment of this legislation would improve the contract disputes system by ensuring the decisional independence of BCA judges and by promoting uniformity and timeliness in the filing of claims.

V. Section-by-Section Analysis

The short title of this bill is the Contract Disputes Act Amendments of 1986.

TITLE I

Section 101 of Title I amends the CDA (41 U.S.C. 607(b)(1)) by setting forth statutory protections for the BCA Judges.

This section clarifies that CBA Judges are in the competitive service, subject to the competitive examination conducted by the Office of Personnel Management. The section further stipulates that the competitive examination is to be deigned to demonstrate the applicant's public contract law experience, as required under the CDA, and that a separate register is to be established and maintained for eligibile candidates.

Finally, section 101 extends to the BCA Judges a list of protections currently afforded to ALJs. These protections include: prohibition against redelegation of examination responsibility (5 U.S.C. 1104(a)(2)), permission for reemployment in certain cases (5 U.S.C. 3323(b)(2)), exemption from performance evaluations (5 U.S.C. 4301(2)(D)), guarantee of periodic step increases (5 U.S.C. 5335(a)), and removal only for good cause after a hearing before the Merit Systems Protection Board (5 U.S.C. 7521).

Section 102 of Title I "grandfathers" existing BCA Judges serving on the date of enactment of this bill.

TITLE II

Section 102 of Title II amends the CDA (41 U.S.C. 605(a)) to impose a 36-month statute of limitations on the submission of contractor claims to the government. The starting date for this statute of limitations is the first date on which the claim could have been submitted under the contract.

Section 202 amends the CDA to establish a uniform time period of six months for appealing a contracting officer's decision either to a BCA (41 U.S.C. 606) or to the Court of Claims (41 U.S.C. (609(a)(3)).

Section 203 sets forth the effective dates.

VI. Estimated Cost of Legislation

(Included)

VII. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has considered the resultory and paperwork impact of S. 2426, the Contract Disputes Act Amendments of 1986.

S. 2426, as reported, is designed to enhance the independence and improve the timeliness of the contract disputes process. The Committee does not believe that this legislation will result in any regulatory impact and does not foresee any significant paperwork impact.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 29, 1986.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, 340 Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2426, the Contract Disputes Act of 1986, as ordered reported by the Senate Committee on Governmental Affairs on June 25, 1986. CBO estimates that enactment of this bill would result in no significant costs or savings to the federal government and would not affect the budgets or state or local governments.

The bill would require federal agencies to use a competitive examination process to select judges for agencies' boards of contract appeals (BCA). The bill would also require BCA judges to be treated in the same manner as federal administrative law judges for certain administrative purposes. Under current law, BCA judges are selected by the agency on whose board they serve and may be removed without appeal. S. 2426 would eliminate agency responsibility for maintaining a list of candidates for BCA positions and would transfer this responsibility to the Office of Personnel Management (OPM), which currently maintains such a list for administrative law judges. In addition, BCA judges could be removed only for good cause after a hearing before the Merit Systems Protection Board. These provisions would provide protection for BCA judges to insulate them from agency control.

Based on information from OPM and several other agencies, we expect OPM could perform the additional examination and registration requirements without significant additional costs because agencies fill only one or two BCA vacancies per year. The federal government would not realize significant savings because executive agencies currently expend little effort to maintain registers of qualified candidates for BCA positions. Other provisions of the bill are not expected to result in significant costs or savings.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

VIII. VOTE IN COMMITTEE

The Committee, a quorum being present, reported S. 1134 by voice vote on June 25, 1986.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the standing Rules of the Senate, changes in existing law made by the bill, as

reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets; new matter is printed in italic; and existing law in which no changes are proposed is shown in roman):

TITLE 41. PUBLIC CONTRACTS

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Chapter 9—Contract Disputes

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Decision by contracting officer—Contractor claims

Section 605(a) [All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision.] *Each claim by a contractor against the Government relating to a contract shall be in writing and shall be submitted to the contracting officer, not later than 36 months after the first date on which the claim could have been submitted under such contract, for a decision.* All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this chapter. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding. The authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine. This section shall not authorize any agency head to settle, compromise, pay or otherwise adjust any claim involving fraud.

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Contractor's right of appeal to board of contract appeals

Section 606 Within [ninety days from] *180 days after* the date of receipt of a contracting officer's decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title.

* * * * * * *

Appointment of members; chairman; compensation

Section 607(b)(1*(A)* Except as provided in paragraph (2), the members of agency boards shall be [selected] *in the competitive service, selected pursuant to the competitive examination process under subchapter I of chapter 33 of title 5, United States Code,* and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of Title 5, with an additional requirement that such members shall have had not fewer than five years' experience in public contract law. *Such competitive examination shall be designed to demonstrate, among other appropriate qualifi-*

cations, the applicant's public contract law experience. A separate register shall be established and maintained for candidates eligible for appointment to such boards. [Full-time members of agency boards serving as such on the effective date of this chapter shall be considered qualified.]

(B) The chairman and vice chairman of each board shall be designated by the agency head from members so appointed.

(C) The chairman of each agency board shall receive compensation at a rate equal to that paid a GS–18 under the General Schedule contained in section 5332 of Title 5, the vice chairman shall receive compensation at a rate equal to that paid a GS–17 under such General Schedule, and all other members shall receive compensation at a rate equal to that paid a GS–16 under such General Schedule. Such positions shall be in addition to the number of positions which may be placed in GS–16, GS–17, and GS–18 of such General Schedule under existing law.

(D) For the purposes of sections 1104(a)(2), 3323(b)(2), 4301(2)(D), 5335(a), and 7521 of title 5, United States Code, a member of any agency board appointed under this paragraph shall be treated in the same manner as an administrative law judge.

* * * * * * *

Judicial review of board decisions—Actions in United States Court of Claims; district court actions; time for filing

Section 609(a)(1). Except as provided in paragraph (2), and in lieu of appealing the decision of the contracting officer under section 605 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a United States district court pursuant to section 1337 of Title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) Any action under paragraph (1) or (2) shall be filed within [twelve months] *180 days* from the date of the receipt by the contractor of the decision of the contracting officer concerning the claim, and shall proceed de novo in accordance with the rules of the appropriate court.

○